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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

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DISTRICT

John Chmielewski	*	
	*	
Claimant	*	
	*	
v.	*	
	*	
TMS International, LL	*	
	*	
Defendant	*	**Civil Action No. 316CV-00421-JVB-JEM**

CLAIMAINT'S PRIMARY RESPONSE TO DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Claimant reserves the right to alter or amend this document. Comes now Claimant Pro Se in response to DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS CLAIMANT'S COMPLAINT…as follows:

1. For purposes of review, this amended lawsuit by Plaintiff charges, first, a simple breach of a two-party contract/agreement by Defendant known as the W-4 Withholding Allowance Certificate. As a condition of his employment, Claimant was required by Defendant to complete and sign a the W-4 Certificate (Claimant's Exhibit "A") on which certificate Plaintiff, and Plaintiff only, was required by Defendant to select one, and only one, of numerous options made available to him on the certificate relating to a determination by Claimant of what deductions, if any, were to be made as income tax withholding from his compensation for his labor. The W-4 certificate contained no wording authorizing any change or addition in the Claimant's exclusive option/selection authority in the W-4 contract/agreement by any party other than Claimant, who, by his signature thereon Claimant contends that he, alone, had authority to select whichever of the several options available he deemed appropriate.

2. As was this exclusive right, Claimant, as a NON-CORPORATE, living soul, non-taxpayer, American national, selected Option 7 EXEMPT on the W-4 certificate/agreement which

selection Claimant contends confirms his non-taxpayer legal status as respects income tax. Consistent with that selection, Claimant charges that Defendant was, and still is, legally obligated by the wording on the W-4 contract/agreement to honor his Option 7 EXEMPT election. In fact, significantly, Defendant did so honor Claimant's EXEMPT election for over nine months following the filing of his W-4 certificate on March 25, 2015 with the employer-Defendant. This lawsuit relates to a much later breach of contract by Defendant starting, without any notice by Defendant to Claimant, almost ten months after his W-4 EXEMPT was signed by Claimant! This breach by Defendant commenced on January 15, 2016 and has continued weekly to date. Said loss of large weekly deductions from Claimant's compensation for his labor was apparently caused by Defendant's unlawful compliance with a request by the Internal Revenue Service addressed to Defendant (Defendant's Exhibit #2). Without permission or notice to Claimant, Defendant commenced withholding deductions on January 16, 2016, despite Claimant's written objections (Claimant's Exhibit "E") in which Plaintiff claims such deductions are in violation of his option authority on the W-4 certificate in which he selected Option 7 EXEMPT in keeping with his non-taxpayer legal status as respects income tax. Claimant pledged, under penalty of perjury, as required on the W-4 certificate, in support of his EXEMPT Option 7 selection, that he had no income tax liability for the previous year and contemplated no liability for the coming year, thereby even further establishing by such pledge his non-taxpayer legal status. Such status he had previously affirmed constitutionally, statutorily and by a detailed affidavit (Claimant's Exhibit "B") which was sent to Defendant in support of his Option 7 EXEMPT choice in his original claim.

3. Claimant calls to the attention of this Honorable Court that Defendant counsel's lengthy response to Claimant's simple breach of contract claim is an obvious attempt by Defendant to focus this Court's attention on a totally false, rebuttable presumption by Defendant that Claimant is, and always has been, a statutorily-defined "taxpayer" as respects income tax. Defendant includes, in his response, numerous citations relating to prohibitions against lawsuits applicable

only to known, admitted "taxpayers", thereby, relating only to "taxpayers" and to tax issues which are totally "off point" and inapplicable to this proven non-taxpayer Claimant! Until such time, if ever, that the Defendant and/or the IRS can prove, which they have not either done or even tried to do, that Claimant is, constitutionally and statutorily, a person liable for income tax, the alleged, but presumed, prohibitions cited by Defendant, such as the Anti-Injunction Act (26 USC 7421) have no application against this undisputed non-taxpayer Claimant. Rather, the abundance of evidence which has been called to this Honorable Court's attention to contradict the Defendant's rebuttable presumption that Claimant is a statutory and constitutional "taxpayer" is overwhelming. Such rebuttable evidence includes, but is not limited to, the indisputable facts that Plaintiff's non-taxpayer, legal status is confirmed by the Constitution, the statutory law and his AFFIDAVIT OF REVOCATION & RESCISSION in addition to his selection on the W-4 Withholding Exemption Certificate of Option 7 EXEMPT which further confirms his non-taxpayer legal status. Even the Supreme Court in the case of United Dominion Industries v. U.S., 542 U.S. 822 (2001) requires the IRS to show a statute imposing liability on all taxpayers when Justice Clarence Thomas stated:

> *When the tax gatherer puts his finger upon the citizen, he must also*
> *Put his finger on the law permitting it.*

Despite Claimant's repeated requests, the IRS has never been able to satisfy this United Dominion Industries Supreme Court requirement, even further proving Claimant's non-taxpayer legal status as respects income tax. Claimant's rebuttal of Defendant's presumption of taxpayer's legal status thereby fully satisfies the requirement of Hendrick v. Uptown Safe Deposit Co. (1st Dist.) 21 III App. 2d 515, 159 NE2d 58. Even further, the Supreme Court in Texas Dept. of Community Affairs v. Burdine, 450 US 248, 67 L.Ed 2d 207 (1981) also ruled that once the party adversely affected by a presumption (Claimant) offers sufficient evidence, which this Claimant has done, rebutting the presumption to avoid a directed verdict as to the presumed fact, presumption drops out of the case, and the burden of persuasion as to the presumed fact remains with the party

(Defendant) who has that burden at the outset of the trial. The "presumed fact" in the instant case has been clearly and effectively denied by this Claimant.

The primary issue at bar deals only with Defendant's violation of Claimant's sole election authority on the W-4 contract/agreement. Claimant contends that the clear wording in the W-4 contract/agreement restricts the option selection authority in the certificate to the Claimant only. Such unauthorized interference by Defendant, therefore, is pure theft of a portion of this non-taxpayer Claimant's most precious of his personal property.

4. Claimant also contends that Defendant, as a large corporate entity, employing competent legal counsel should have easily recognized, upon receipt of the IRS' unlawful option change request (Defendant's Exhibit 2) that, neither the Internal Revenue Service, or the Defendant, neither of whom had signed the W-4 certificate, had any legal authority to question or change Claimant's EXEMPT election thereon. Therefore, Defendant should also have promptly denied the IRS' request (Defendant's Exhibit #2) to interfere in the two-party only contract/agreement in the W-4 certificate, informing the IRS that, because they were not a party to the contract/agreement and that, because Claimant only had signed it, Defendant also had no change authority thereon. The issue for this Court's decision relates to Claimant's claim of a breach of contract by Defendant in their violation of Claimant's exclusive right, as stated in the W-4 Withholding Allowance Certificate, to select and require compliance with whichever of the seven available options he alone decided were applicable to him. Claimant further charges that by his compliance with the IRS' unlawful request (Defendant's Exhibit 2), Defendant is also guilty under the law of conversion, as will be shown in the attached Memorandum of Fact and Law. Claimant has repeatedly stated in this suit that his claim is not a tax issue as he is not, and never has been, a constitutional or a statutory "taxpayer"! Whether or not Claimant owes an income tax is also irrelevant to this primary breach of contract issue, despite Defendant counsel's contrary contention. Such a tax liability question remains a separate issue between Claimant and the non-defendant IRS only. (See

the following Memorandum of Fact and Law.) The Defendant's legal responsibility was, and still is, to honor and continue to obey Claimant's Option 7 EXEMPT selection on his W-4 certificate, as they did for almost ten months before complying with an unlawful request by a third party (IRS) who is not now, and never has been, a party to the W-4 certificate/agreement. Hence, neither Defendant nor the IRS has any authority to change Plaintiff's Option 7 EXEMPT election, whether or not he owes any tax.

5. Accordingly, Claimant Pro Se renews his REQUEST of this Honorable Court in his original claim, adding to his REQUEST his plea for return by Defendant of his filing fee for this suit in the amount of $400.00 and his Service of Process fee in the amount of $55.00 over and above return of all monies unlawfully withheld from his paycheck since January 15, 2016 to date. Claimant also asks this Honorable Court to award him interest for loss of use of the amounts unlawfully deducted from Claimant's paychecks and whatever other punitive damages against Defendant deemed appropriate by this Honorable Court, all of which Claimant pleads be computed at this Court's discretion and direction.

MEMORANDUM OF FACTS AND LAW IN SUPPORT OF CLAIMANT'S PRIMARY RESPONSE TO DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT

1. Defendant's brief repeatedly cites the case of Edgar v. Inland Steel Co., 744 F2d 1276 in support of their motion to dismiss Claimant's claim. In this District Court affirmation ruling, the appellate court states:

> *The pleadings contain no allegations that the employment contract contained no clauses requiring Defendant to restrain from withholding federal taxes from their wages. In the absence of such a provision, the employer discharges its contractual obligation when it pays its employees their wages less withholding.* (emphasis added)

The appellate court's confirmation goes on to reference the cases of Stonecipher v. E. Bray, 653 F2d 398, 401 (9th Cir.) (1981) and also United States Fidelity & Guaranty Co. v. United States, 201 F2d 118, 120 (10th Cir.) (1952) in support of Edgar, supra, making them also inapplicable in the instant action. First, Claimant claims that the holdings in these cases, like Edgar, supra, relate to, and are dependent upon, for their provisions to apply, to the existence of a presumed, and unchallenged income tax liability applicable to the Claimant, which he denies. However, such presumed liability in this Claimant's case is a rebuttable presumption which Claimant has effectively denied in his publicly-filed AFFIDAVIT OF REVOCATION & RESCISSION (Claimant's Exhibit "B"). Significantly, neither the IRS nor Defendant have ever criticized or even acknowledged his affidavit's existence, although it was on file as a public information document and was referred to them long before, and again after, Defendant started the unlawful deductions. Claimant contends that his pledge under penalty of perjury on his W-4 certificate that he had no tax liability in the previous year and contemplated none for the current year in support of his W-4 EXEMPT option selection does, in and of itself, more than satisfy the required exception clause in Edgar, supra, and, does, indeed, thereby constitute a command to his employer, as further supported by our Supreme Court in United Dominion Industries, supra, to refrain from withholding federal taxes from his non-taxpayer, living soul's weekly paychecks, particularly considering that such a command is even further supported by his affidavit. What additional proof of state-domiciled Claimant's authority to select EXEMPT on the W-4 could be required? In truth, of even more significance, no additions to the W-4 certificate by Claimant were permitted by his employer in keeping with the rules and regulations published by the IRS, which agency created the W-4 certificate requiring all taxpayer/corporate employers, such as Defendant, to have their employees complete, sign and submit it without any alteration or addition. Therefore, Claimant had no authority on the W-4 to create a separate "clause" (Edgar, supra) requiring Defendant to refrain from withholding. Claimant claims, however, that, despite this forced (by Defendant) omission of the "clause" required by Edgar, the equivalent of such a clause is sufficiently embodied in his W-4 EXEMPT submission and his affidavit. Hence, this Claimant's unquestioned, constitutional, statutory and affidavit-established, non-taxpayer legal status was legally established by Claimant and is more than sufficient for this Honorable Court to distinguish Claimant's case from Edgar, Stonecipher, USF&G, etc. cited by Defendant in support of Edgar, supra, and thereby overcome the prohibitions in these cases and Rules 12(b)(1) and 12(b)(6).

2. It is noteworthy that, despite Claimant's repeated requests, the IRS has never been able to cite for Claimant any statute (Code Section) in Sub-Title A of Title 26 United States Code, in keeping with the requirement of United Dominion Industries, supra, showing the essential prerequisite liability for income tax applicable to him that he allegedly owes.

3. Claimant has not only denied these improper and unidentified liability presumptions applied against him by the IRS and Defendant, but contends that he has also proved, to the contrary, the very opposite; i.e., constitutionally and statutorily as stated in the thirty-one structured statements embodied in his AFFIDAVIT OF REVOCATION & RESCISSION (Claimant's Exhibit "B") which was and still is on file as a public information document available not only to this Court, to the Defendant and to the IRS but to the entire world on the web site getnotice.info/jctc.html under Document No. JCTCARR0001. It is also noteworthy that, in conformity with his detailed affidavit, Claimant has filed no tax returns nor has he paid any income tax to the federal government for more than eight years since discovering, through his own in-depth legal research, his life-long, true, non-taxpayer legal status. During this time, Claimant has received no inquiries or denials of his affidavit-affirmed, non-taxpayer status, either in writing or in person from Defendant, the IRS or any agent employed thereby questioning this legal status as affirmed in his affidavit (Claimant's Exhibit "B"). It was in keeping with that knowledge that Claimant filed his W4 certificate as was required by Defendant as a condition of his employment, claiming under penalty of perjury that he had no tax liability for the previous year and expected none for the

current year. Claimant contends that his "no liability" pledge alone, considering it was given under penalty of perjury, provides more than adequate proof that he had no hesitation about proclaiming his non-taxpayer legal status, both publicly and in affidavit form available to everyone, including the IRS as well as his employer. For these several reasons, Claimant contends the long-term, failure of the Internal Revenue Service or the Defendant to dispute this status provides even more confirmation in support of his EXEMPT claim on his W-4 certificate. If the IRS can prove him wrong in a court of law, Claimant knows full well that he faces a possible criminal charge for failure to file tax returns for many years, including possible punitive penalties for such failure, heavy fines and even imprisonment. Being well aware of these potential penalties, Claimant faces that reality with full confidence that he can prove his position in a court of law when and if required. He, therefore, is unconcerned about any disagreement and/or threats from the Internal Revenue Service which they have significantly failed to institute against him for more than eight years of his non-filing of tax returns. Claimant again pleads that these facts lend more than sufficient substance in support of his claim on his W-4 certificate of Option 7 EXEMPT which is in full keeping with his affidavit-supported, non-taxpayer position. Claimant, therefore, claims again that his no liability pledge under penalty of perjury for either the previous year or the current year in further support of his EXEMPT claim on his W-4 must be honored by both Defendant and the IRS for so long as the IRS is unable to refute his affidavit and continues in their failure to challenge and prove him incorrect in a court of law.

4. Claimant now also calls to this Honorable Court's attention his second and vitally important, but publicly unrecognized fact that, for constitutional reasons, all withholding of income tax for state-domiciled, American nationals, like Claimant, must

legally be, and therefore is, voluntary despite Defendant's plea to the contrary. This fact is proof, in and of itself, of Claimant's position and is of vital importance to the issue at bar for, if this Claimant can successfully satisfy this Honorable Court of the truth of the constitutional and statutory necessity for all withholding to be voluntary when applied against American nationals living within the fifty states, who enjoy constitutional protection against any direct tax, such truth alone secures this Claimant's claim beyond any dispute as this Court will readily see. Therefore, this Claimant will begin in detail as follows: When Plaintiff raised this question by written inquiry to the Internal Revenue Service prior to the commencement of withholding by Defendant on January 15, 2016, the IRS' response (Claimant's Exhibit "G") cited as their authority I.R. Code Section 3402 and 3403 of Title 26 United States Code and some of their regulations. As this response will show, these alleged authorities can impose mandatory withholding or tax liability as stated in the IRS letter, only when applied against residents of the four island possessions or the District of Columbia who live in that legislative democracy called THE UNITED STATES where the constitutional prohibition against any direct tax is not applicable. However, these Code Sections and their regulations referenced in the IRS' response to Claimant's inquiry (Claimant's Exhibit "G") do not apply to Claimant or any state-domiciled nationals, like Claimant, where mandatory withholding would be the obvious 100% equivalent to imposition of an unconstitutional direct tax. Claimant pleads that these regulations may be voluntarily-adopted implementing regulations for the benefit and convenience of most uninformed, state-domiciled working American nationals who are volunteering to pay an income tax on their wages that they do not owe because they do not understand the extremely limited liability for income tax as does this Claimant. They have been successfully deceived by the IRS into incorrectly believing that they owe an income tax on their wages and salaries, and are simply volunteering to participate in the Withholding Compliance Program in order to ease the burden by making small weekly payments. A majority of the many millions of working American state nationals have been intentionally deceived by IRS propaganda that they owe income tax. They volunteer out of fear and ignorance of the law, not realizing that mandatory withholding would be the 100% equivalent of a direct, unapportioned and, hence, unconstitutional tax. Therefore, it must constitutionally be voluntary for them! Also, and of primary importance, the Internal Revenue Code, Chapter 24, relates specifically to withholding by the federal government from federal employees only which does not include this Claimant. (See Code Section 3402(c) and (d) which will be quoted soon hereafter.) This chapter is deceptively titled by the IRS "COLLECTION OF INCOME TAX AT SOURCE". It is extremely important to note that Chapter 24 contains no section imposing any tax. Rather, the entire chapter was written many years ago merely to establish a convenient, voluntary tax collection method for federal government employees only (which does not include Claimant) to make voluntary, smaller, easier payments for income tax on a weekly, semi-weekly or monthly basis rather than having to exercise the discipline required to voluntarily set aside funds from each paycheck sufficient to make a single, annual payment of tax at year's end by April 15th.

5. In enacting this legislation, Congress was aware of the very natural temptation which we all have to spend our paychecks as soon as received, making collection of taxes in one, large, lump sum payment in April of the following year difficult, if not impossible. To remedy this problem, many years ago Congress passed the voluntary withholding system to make it much easier for federal employees, living in D.C. or one of the four island possessions, to pay the tax in small increments as they received their paychecks. Note that we have stressed the word "voluntary" in describing withholding because it is

of vital importance that this Honorable Court understand that state-domiciled American nationals, such as this Claimant, are constitutionally protected by reason of their residence in one of our fifty sovereign states to keep all the fruits of their labor in the form of their total paycheck without interference by the IRS unless they are withholding agents for foreign entities. It is in recognition of these constitutional prohibitions against any direct tax on state-domiciled nationals that the withholding system was originally established for the benefit of federal employees who live in the legislative democracy known as THE UNITED STATES, being D.C. and/or the island possessions where the Constitution does not apply and these federal employees could be taxed directly. For that reason, mandatory withholding of income tax could be enacted into law in those federally-controlled areas. State-resident-nationals, including this Claimant, however, are constitutionally protected against such taxation by their residence against any unapportioned, direct tax that would be unconstitutional in violation of Article 1, Section 2, Clause 3 and also as a forbidden capitation tax by Article 1, Section 9, Clause 4 of the Constitution.

6. The terms "employee" and "employer" are defined respectively in the withholding chapter under I.R. Code Sections 3401(c) and (d), reproduced following, showing that, for the purposes of the entire withholding chapter, the employee is a federal worker and the employer is the federal government. Such definitions that apply within this Withholding Chapter 24 are necessary because, obviously, the federal government has no control over the paychecks of non-government workers like this Claimant, so they were not included in the definitions. And, despite these clear, limiting definitions of "employer" and "employee", the IRS has been amazingly successful, through their propaganda efforts, and through public ignorance of the true meaning of the Sixteenth Amendment, to deceptively and erroneously convince private employers and employees

that they legally owe an income tax and that the provisions of this withholding chapter are mandatory and that they apply to them as well as to government employers and workers. Fortunately, examination of these Code Sections will show that there is a distinct revealing reference to voluntary withholding in Chapter 24 which applies to many millions of non-government, state-domiciled, nationals, like Claimant, who may, through patriotism, ignorance or fear, voluntarily elect to pay the income tax that they don't lawfully owe and want to take advantage of the easy-pay voluntary withholding plan. This is shown in Code Section 3402(p)(3)(B) which will be quoted and explained following in this pleading. As we will see, however, the necessarily voluntary nature of the entire I.R. Code Chapter 24 withholding program for the benefit of state-domiciled nationals like Claimant is emphasized in both the applicable Code Sections passed by Congress and the implementing Regulation 31.34302(p) (Claimant's Exhibit "D"), which is in keeping with every state-domiciled national's constitutional, Fourth Amendment property security right and their Fifth Amendment due process right to keep 100% of the fruits of their labor (paycheck) without interference by government or any private, non-government employer, like this Defendant. Such state-domiciled-nationals then either voluntarily grant or deny permission for the withholding on a signed W-4 Withholding Allowance (permission) Certificate. Claimant has denied such withholding by his election of Option 7/EXEMPT and to repeat, for emphasis, he did so freely and confidently, openly risking penalty of perjury and fully supported by his affidavit as previously stated.

7. IRS Regulation 31.3402(p)(2), the implementing regulation, which the Claimant will quote hereafter, shows every state-domiciled national employee's right to either accept or reject any withholding. Every American state-national's right to totally reject all withholding by giving his employer a signed, written notice to do so, is his

constitutionally-secured right under the Fourth and Fifth Amendments, as this Claimant has done by claiming EXEMPT on his W-4 certificate. Plaintiff's Fifth Amendment constitutional right is also specifically recognized statutorily in I.R. Code in Section 3402(n) in the withholding Chapter 24 of the I.R. Code which says that, if any person, such as this Claimant, has completed the W-4 certificate stating, under penalty of perjury, that he had no income tax liability for the preceding year or the current year, as has this Claimant, his employer is relieved from the withholding requirement. The entire withholding system for state-domiciled-nationals, like this Claimant, must, to avoid unconstitutionality, be, and is, totally dependent upon voluntary permission on the W-4 Withholding ALLOWANCE Certificate by the employee who authorizes (meaning "permits", a "voluntary" word) withholding, which this Claimant did not do, by signing and submitting a withholding option on the IRS "W-4 Employee's Withholding Allowance Certificate" which he was required by Defendant to complete, sign and return. This certificate either "allows" or "denies" the ability of the employer to deduct and withhold money from his pay. For this Claimant, mandatory withholding would be unconstitutional as shown in Paragraph 4 hereinbefore. Therefore, the creation of withholding must be, and is voluntary, and the cancellation must also be voluntary for state-domiciled-citizen-nationals because of their Fourth and Fifth Amendment rights in our Constitution which common law rights are further secured by the provisions of UCC 1-308 and the Clearfield Doctrine as previously quoted in this Claim. State-domiciled-nationals are protected by the Fourth Amendment property seizure provision and the due process clause in the Fifth Amendment of the Constitution to keep 100% of the fruits of their labor unless they voluntarily surrender some of that right, in writing, on the W-4 Withholding Allowance Certificate which thereby relieves the employer of legal responsibility because he has not forced his employee to pay; rather, the employee surrendered his Fifth Amendment right by volunteering for the withholding convenience. He may, or may not legally owe the tax, depending, in most cases, upon on his residence.

8. The very limited number of employees who are statutorily-defined as subject to mandatory withholding in the withholding Chapter 24 under Code Section 3401(c) and (d) are shown as follows:

> **Code Sec. 3401. Definitions.**
> **(c) Employee.**
> For purposes of this chapter, the term "employee" includes (means) an officer, employee or elected official of the United States, a State, or any political sub-division thereof, or the District of Columbia or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation. (emphasis added)

> **Code Sec. 3401. Definitions.**
> **(d) Employer.**
> For purposes of this chapter, the term "employer" means the person for whom the individual performs or performed any service, of whatever nature, as the "employer" of such person…

9. In addition to the District of Columbia, Section 3401(c), by referring to "an officer, employee or elected official of the United States", is a clear reference to employees of the federal government. Hence, this statute embraces ONLY federal employees wherever domiciled, not only including the District of Columbia but also federal employees in any of the fifty states of the union and the four island possessions, so this definition, significantly, does not include this Claimant.

10. It is revealing that the definition of "employee" shown in Code Section 3401(c) also includes the term "State" which is a term that is deceptively defined in Code Section 7701(a)(10) as follows:

> **Code Section. 7701. Definitions.**
> **(a)(10) State.**
> The term "state" shall be construed to include the District of Columbia where such construction is necessary to carry out the provisions of this title. (emphasis added)

11. The limited meaning of the word "include" in this definition also needs an explanation showing the definition of the terms "includes" and "including" as follows:

> **Code Sec. 7701. Definitions.**
> **(c) "Includes" and "including".**
> The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

This Code Section suggests at first reading that these could be some unstated meaning of the term "includes". However, the wording of this section immediately raises the question: "What can be included other than what is stated?" And the obvious answer to this question is "nothing". And this "nothing" answer/conclusion is in keeping with *Sutherland's Rules of Statutory Construction* and the U.S. Supreme Court in the decisions of Gould v. Gould, 245 U.S. 151 (1917), U.S. v. Missouri Pacific Railroad, 278 U.S. 269 (1929), Dickerson v. New Banner Institute, Inc., 460 U.S. 103 (1983) and Montello Salt v. Utah, 221 U.S. 452 (1911), the first two of which were cited in Claimant's AFFIDAVIT OF REVOCATION & RESCISSION (Claimant's Exhibit "B"). Therefore, this definition limits the application of the term "employee" to those working for the federal government or for the District of Columbia (which is how "state" is defined) or for U.S. possessions and officers of a government-owned corporation. Section 3401(d) identifies the "employer" as one for whom the "employee" works. This means that the meaning of the term "employer" is limited to those entities listed in Section 3401(c)-being the U.S. government, the District of Columbia, etc. The term "employer" does not include any non-government employer or business, such as Defendant-a private corporation. Also, on the basis of the definition of "employee", as shown above, most of the nation's population, which includes this Claimant are not even subject to the withholding provisions in the Withholding Chapter 24! This is understandable because, like this Claimant, and all other state-domiciled-national employees, who have Fourth and Fifth Amendment, constitutional property and due process rights to their property, which includes the most precious of their property, being their paychecks. If they want to simply volunteer to pay the income tax, they don't need any special statutory program to negotiate a totally voluntary withholding plan with their employers, in contrast to federal employees living in the District of Columbia or one of the island possessions, where mandatory withholding is permitted.

13. In addition to these limitations on the meaning of the terms "employee" and "employer", shown above, of vital importance for your Honor's understanding, I.R. Code Section 1402(d), as this Claimant stated in his original claim in paragraph 2 of page 5 thereof, says that the terms "wages" and "employee" have the same statutorily-limited meaning as when used in the FICA Chapter 21, which chapter limits their use only to persons living and working in one of the four island possessions of Puerto Rico, the Virgin Islands, Guam and American Samoa. These areas do not include this Indiana-domiciled-national Claimant! This Section 1402(d) states as follows:

> **Sec. 1402. Definitions.**
> **(d) Employee and wages.**
> The term "employee" and the term "wages" shall have the same meaning as when used in Chapter 21 (see 3101) and following related to Federal Insurance Contributions Act.

Note the absence in this Code definition of any words of limitation such as "for purposes of this chapter" or "for purposes of this sub-chapter". This definition means, therefore, that because of this broad inclusion, that, whenever and wherever the terms "employee" and "wages" are used anywhere throughout the entire Code, their applications are limited to those people involved in activities within the four island possessions only, as previously identified, the same as in Chapter 21, the Social Security flat-rate income tax chapter. This clearly means, therefore, that, because this Claimant does not live in one of those four island possessions, and Claimant is neither an "employee" nor does Claimant received "wages", as defined and limited by said Section 1402(d), the withholding Chapter 24 does not statutorily apply to him! Rather, the entire withholding chapter's application is statutorily limited by Code Section 1402(d), as this Claimant claimed starting on paragraph 2 on page 5 of his original claim, to those who live in one of the four island possessions which are all part of the legislative democracy called THE UNITED STATES where direct taxes can legally be imposed because the constitutional prohibitions against unapportioned direct taxes do not apply in those four island possessions. Rather, they apply only in the fifty states comprising our constitutional republic. Considering these limitations as stated in Code Section 1402(d), a positive conclusion is correctly drawn that any mandatory withholding can apply only to "employees" resident in one or more of those four island possessions who earn money in the form of "wages". This raises the obvious question: "Why would mandatory withholding be limited geographically in this manner?" Statutory and constitutional examination, as previously shown, immediately answers that question. Any mandatory withholding tax , if it were applied against state-resident-nationals who have the protection of the Constitution would be an unconstitutional, unapportioned direct tax in violation of Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4 of our Constitution. These limited, constitutional taxing provisions, as your Honor must know, were not repealed by the Sixteenth Amendment, which defined the income tax only as an indirect excise tax on government-privileged profit or gain, such as corporate profits, but not on the God-given, constitutional right of U.S. citizens to earn a living, such as this Claimant, who is still constitutionally protected against any unapportioned direct tax as a resident in one of the fifty states of our constitutional republic. Again, to repeat for emphasis, this protection, however, would be inapplicable to residents of any of the four island possessions who live in a federally-controlled legislative democracy in which these constitutional limitations against any direct unapportioned or capitation tax do not apply. So, these island residents who are not so constitutionally protected can legally be taxed directly while we state-domiciled-nationals cannot. This geographically-limited application of any direct tax is simply THE REASON why all withholding must be and is voluntary for all constitutionally-protected, state-domiciled-nationals, including this Claimant, who can, therefore, claim the benefit of the constitutional limitations against any direct tax which Claimant does by claiming EXEMPT on his W-4. Such claim obviously includes his right to deny all voluntary withholding which Claimant also did by electing Option 7 EXEMPT. It is interesting that the same restriction against any unapportioned direct tax is also applicable under Chapter 21 of the I.R. Code relating to the Federal Insurance Contributions Act, better known as Social Security. This FICA direct tax is geographically limited for the same reason! It is also interesting that, despite the all-encompassing, constitutional and statutory limitations against any direct tax on those, like Claimant, living in our constitutional republic, the IRS has been amazingly successful in deceptively, but falsely, convincing the vast majority of all working American nationals that they are subject to unconstitutional, direct, unapportioned taxation on their wages by both the FICA law in Chapter 21, as well as the income/withholding tax in Chapter 24 of the I.R. Code. Both are openly and blatantly unconstitutional when applied against earnings of state-domiciled-nationals for the reasons cited by this Claimant. Admittedly, we must give the Internal Revenue Service credit for their deceptive propaganda sales ability. This Claimant acknowledges that many millions, if not billions, of irredeemable Federal Reserve Notes are collected annually from millions of American working nationals who are simply volunteering to pay income and FICA taxes that they don't constitutionally or statutorily owe, as explained above. They pay out of fear and mass ignorance of the very limited income and FICA tax law, mostly by voluntary withholding, which, although it must be voluntary when applied to state-resident-nationals, in order to retain its constitutionality, is sold to the public as though it were mandatory in order to enhance collection. Such chicanery may be considered by some to be a political positive, but to the many American nationals for whom mandatory tax withholding is an unconstitutional, financial burden, it is pure theft, even if unknown as such simply because they have bought into the deceptive IRS lie that they owe the tax!

14. One final observation about the W-4 Withholding Allowance Certificate is noteworthy for your Honor's attention. Clearly aside from the stated proof that all withholding must constitutionally be voluntary for all state nationals, like Claimant, your Honor's attention is also called to the broad-letter title of the W-4 certificate, which defines it as an ALLOWANCE certificate which is the same as a PERMISSION certificate. To "permit" is to "allow". Hence, the W-4 certificate is clearly and correctly defined in its title as voluntary but is misapplied unconstitutionally against many millions of state-resident-nationals through the IRS' Withholding Compliance Program as though it were mandatory.

15. This Claimant agrees with Defendant where he noted at the top of page 5 of his brief: "The court is also permitted to consider any documents incorporated or referenced in (a Plaintiff's) complaint." SMC Corp. v. Peoplesoft USA, Inc., 2004 U.S. Dist. LEXIS 6510. Defendant also noted in his brief: "For the purposes of a Motion to Dismiss, a court may consider documents as part of the pleadings if they are referred to in the complaint and central to the Claimant's claims. (citations omitted)." Accordingly, Claimant includes in this pleading for purposes of your Honor's deeper understanding of this Claimant's position on the questions at bar, copies of two flyers titled first, WE

CHALLENGE ANYONE TO DISPROVE THESE FACTS ABOUT INCOME TAX LAW (See Exhibit "I" attached) and, second, SOCIAL SECURITY TAX AND TAX WITHHOLDING ARE VOLUNTARY WITHIN THE FIFTY STATES (See Exhibit "J" attached). These flyers, written over twenty years ago by the then well-known FREE STATE CONSTITUTIONISTS organization, came to the attention of Claimant many years ago. Claimant was advised that many thousands of these flyers have been distributed to other tax patriot organizations throughout the United States and to the IRS as well, without any challenge as to their verity! Claimant points out that the first flyer provides informative information in great depth about the very limited taxing authority created by the Sixteenth Amendment to the Constitution which was enacted in 1913 and most widely misunderstood by the public at large. The second flyer provides similar in-depth information about both the Social Security FICA tax and the predominantly voluntary nature of all withholding, as well as the total exclusion of mandatory withholding in the fifty states of our constitutional republic. Although a moderately lengthy (six pages total) reading, Claimant pleads your Honor's indulgence in absorbing the content of these flyers which, although written long ago, still today provide a comprehensive understanding of the truth of Claimant's pleadings in this lawsuit. The first flyer explains in twenty-seven numbered Facts the relatively unknown or misunderstood truth as confirmed by numerous Supreme Court definitions that the income tax is constitutional only as an indirect excise tax and not as a direct tax on the general public. (See Fact #6.) The very limited application of the withholding Chapter 24 of the I.R. Code are discussed in Fact numbers 12, 18 and 19. A far more comprehensive coverage of the withholding scam is available to this Honorable Court in the SOCIAL SECURITY TAX AND TAX WITHHOLDING ARE VOLUNTARY IN THE FIFTY STATES flyer. Although a four-page read, Claimant prays that your

Honor take the opportunity to absorb the revealing facts contained therein, and particularly, the relatively unknown, extremely limited statutory authorization for any mandatory withholding which does not include this Claimant or any other state-resident-nationals such as this Claimant who live in any of the fifty states of our constitutional republic. They are protected by our Constitution from any direct and unapportioned tax as was shown in the FACTS flyer described above as well as throughout this Claimant's claim. Considering your Honor's limited research time, Claimant urges that your Honor read at least the two-column summary on page 4 of this flyer which covers enough revealing information about the subject of withholding to stimulate this Court to read the more detailed information on this subject contained in pages 1, 2 and 3 which elaborate on the information contained in Claimant's claim.

SUMMARY

First, the W-4 Withholding Allowance Certificate, signed ONLY by Claimant, legally authorizes Claimant alone to change his election of Option 7 EXEMPT. Defendant's disregard of this Claimant's Option 7 EXEMPT sole election authority constitutes simple breach of contract/agreement causing huge monetary loss to Claimant starting on January 16, 2016 and continuing to date.

Second, although income tax withholding can legally be mandatory under I.R. Code Section 1402(d) when applied against "wages" of "employees" in territories such as the federally-controlled four island possessions and/or the District of Columbia where constitutional limitations against direct, unapportioned taxation is not applicable, it cannot, constitutionally, by contrast, be mandatory against individual, sovereign, state-domiciled-nationals, like Claimant, who live in any of the fifty states of our constitutional republic where our Constitution applies, because such mandatory withholding would be an unconstitutional, direct, unapportioned tax which is forbidden by the provisions of Article 1, Section 2, Clause 3 of the Constitution and also the prohibitions against any capitation tax in Article 1, Section 9, Clause 4 of the Constitution.

Because of these constitutional prohibitions which protect working resident-nationals, including this Claimant, who live in one of the fifty states of our constitutional republic, withholding must be voluntary because mandatory withholding would be the 100% equivalent of a forced imposition of a direct, unconstitutional unapportioned tax and/or equally unconstitutional capitation tax.

For this reason, as well as No. 1-Breach of Contract reason stated above, your Honor must grant the relief as requested by Claimant.

Respectfully submitted,

John Chmielewski
John Chmielewski
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Without Prejudice
UCC 1-308

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of ~~August~~ Sept, 2016, a copy of the foregoing pleading was mailed first-class, postage prepaid to: